

## **MINUTES**

### **MONTANA HOUSE OF REPRESENTATIVES 57th LEGISLATURE - REGULAR SESSION JOINT APPROPRIATIONS SUBCOMMITTEE ON CORRECTIONS AND PUBLIC SAFETY**

**Call to Order:** By **CHAIRMAN STANLEY FISHER**, on January 17, 2001  
at 8:00 A.M., in Room 317-A Capitol.

#### **ROLL CALL**

**Members Present:**

Rep. Stanley Fisher, Chairman (R)  
Rep. Tim Callahan (D)  
Sen. Chris Christiaens (D)  
Rep. Jeff Pattison (R)  
Sen. Debbie Shea (D)

**Members Excused:** Sen. Arnie Mohl, Vice Chairman (R)  
Sen. Tom Zook (R)

**Members Absent:** None.

**Staff Present:** Mary LaFond, OBPP  
Lorene Thorson, Legislative Branch  
Sandra Whitaker, Committee Secretary

**Please Note:** These are summary minutes. Testimony and  
discussion are paraphrased and condensed.

**Committee Business Summary:**

Hearing(s) & Date(s) Posted: Department of Justice, Legal  
Services, Central Services,  
Law Enforcement Academy,  
1/14/2001  
Executive Action: None

***{Tape : 1; Side : A; Approx. Time Counter : 0}***

**Ms. Lorene Thorson, LFD**, distributed a summary of the Executive Action taken on the Board of Crime Control and the Public Service Commission by the Committee and went over how she summarized the action. She also distributed a new Agenda/Program Order for the committee with one change noted.

**EXHIBIT(jch13a01)**

**OVERVIEW FOR THE DEPARTMENT OF JUSTICE**

**Mr. Mike McGrath, Attorney General**, gave an overview of the Department of Justice. When he arrived at the state office, he was impressed with the caliber of staff he met but shocked to see how far behind salaries have fallen compared to the private sector and even some of the county offices. This is continuing to create a problem for recruiting people to work for the State. He needed to fill the state solicitor position and was fortunate enough to find a native Montanan who wanted to return; however, part of his budget includes an increase in salary for his exempt staff.

**Mr. McGrath** stated the budget requests were submitted by his predecessor. He noted he would have added more FTE for the Forensics Science Laboratory and the Department of Highway Patrol. He feels they are very understaffed. There are the same number of officers on the road today with the Highway Patrol as in 1972 with the western corridor being especially short.

**Mr. McGrath** gave an example of a case in Custer County in which the Dept. of Justice was involved to show the numbers of agencies, staff, law officers, and communities that became involved.

**EXHIBIT(jch13a02)**

**SEN. CHRISTIAENS** asked **Mr. McGrath** the number of positions with a need for exemption in salaries. **Mr. McGrath** replied each elected official has a number of exempt positions in the department--the Justice Department has 15. However, there are several positions legally and administratively that the salaries are not paid competitively. Some of the Dept. of Justice Administrators are paid as much as \$20,000/year less than other state agency administrators. Many of the County Attorneys are paid better.

**SEN. CHRISTIAENS** has seen a bill in Local Government asking to exempt various positions due to this very issue and he wondered if the Dept. of Administration needs to take a serious look at all the various categories in state employees.

**REP. PATTISON** asked **Mr. McGrath** why a sentence is given at 50 years with 10 suspended. **Mr. McGrath** responded it gives a tail for supervision when the person is released from prison. Specific requirements are placed on the prisoner when they are released and the tail gives Corrections a chance to follow up with probation officers.

**CHAIRMAN FISHER** asked **Mr. McGrath** if there was any guarantee as to a percent of private sector salary that would be paid to those in the Dept. of Justice. **Mr. McGrath** replied most people employed know they could make more money in the private sector and especially if they left Montana; however, the work is so satisfying, interesting, and challenging that they choose to do it for less. But when the county governments begin to pay more than the state, it begins to limit hiring abilities.

### HEARING FOR THE DEPARTMENT OF JUSTICE

#### AGENCY LEGAL SERVICES

**Mr. Larry Fasbender, Deputy Director, Dept. of Justice,** distributed an organizational chart for the Legal Services Division. He gave an overview of the division stating it is the in-house law firm for the State of Montana providing a variety of legal services to state and local government through the five different bureaus-the Appellate Services Bureau, Prosecution Services Bureau, Executive Services Bureau, Civil Services Bureau, and Agency Legal Services Bureau (which includes the bankruptcy program). It is divided between criminal and civil.

#### **EXHIBIT** (jch13a03)

He stated one of the primary issues concerning the Legal Services Division is the workload which is increasing on all fronts. As a result the division has had difficulty meeting vacancy savings targets and since positions cannot be held open while litigation deadlines pass, it creates a serious problem for the department. The workload concerns also affect the divisions relationship with county attorneys who are seeking additional assistance in meeting the greater demands upon their offices.

**Mr. Fasbender** continued that meeting the legal needs of the state through services to state agencies, county attorneys, and other divisions of the Department of Justice is becoming more difficult. There is increasing pressure from the courts to meet deadlines they are working with, from the counties in order to help ease some of their legal burdens, and also from the legislature who continues to want more for less. At the same time as previously pointed out, salaries for state attorneys and other legal professionals are shrinking.

**Mr. Fasbender** stated for the 2001 biennium, the annual budget for the Legal Services Division, excluding Agency Legal Services Bureau and the Natural Resources Damages Program is approximately \$3 million. This includes the addition of the Child Protective

Services department added in the last legislature. They have a total FTE of 74.73 people. Nearly all the Division's funding is from the state general fund. He went on to explain a little about each of the five Bureaus. He covered the duties of each Bureau, the number of staff, the increasing workload, and the concerns of each. He specifically mentioned the Natural Resource Damage Litigation against Atlantic Richfield Company in the Civil Services Bureau. It is not a continuing program but requires renewal every two years by the legislature which amounts to \$1.65 million for that program.

He stated the Justice Department does not always prosecute cases. Judgement is used as to whether or not it is warranted. Many times the taxpayer is saved considerable costs.

***{Tape : 1; Side : B; Approx. Time Counter : 0}***

**Mr. Fasbender** stated the five Child Protection Services attorneys are spread across the state and serve a region of the Department of Public Health and Human Services Child and Family Services Division.

Agency Legal Services has 11 full-time attorneys and 4 paralegal investigators and includes the Department's Bankruptcy Unit. It was created in the early 1980's to reduce the cost associated with the hiring of outside counsel by state agencies. The Bureau is funded on a proprietary basis. They charge an hourly fee of \$62 for attorneys and \$35/hour for paralegals.

**Mr. Fasbender** then addressed the base adjustments to continue to provide current legal services. The Child Protection Unit was begun in 1999 but was not fully staffed. Adjustments now need to be made for that unit being in full operation. Travel costs are requested to maintain the appropriate base level and increased software costs are requested for the electronic research and maintenance of the billing system. The division is also seeking to restore to the special revenue account for anti-trust cases an amount of \$10,000. This program has returned about \$100,000 to the State of Montana. In summary, the department has a biennium request of \$100,000 with about \$80,000 in general fund for base adjustments.

Agency Legal Services Bureau is requesting to increase the charges for attorneys from \$62 to \$70/hour and paralegal fees from \$35 to \$38/hour to cover overhead costs. Fees were last increased in 1997.

**Mr. Fasbender** covered the decreased request for rent. The Department is negotiating rent costs for the new Missoula buildings and will bring forward any reduction once negotiations are final. In the interim during the renovation of the Capitol, a number of the state agencies had to be moved and most of those agencies had to absorb the cost of the move and the increase lease amount in finding other space in Helena. The Justice Department moved the entire Board of Crime Control and absorbed the increased costs. Therefore, the Board of Crime Control did not have the full rent increase in the base year and requested the increase for the 2003 biennium.

**SEN. CHRISTIAENS** asked about the increased rent particularly in the Forensics Lab in the new building in Missoula.

**Mr. Fasbender** stated most of those were covered in the last session of the legislature but the facilities were not occupied. However, now as those facilities are being occupied, in order to correct the rent amounts, the rents have to be annualized. In regards to the Child Protective Units, three of the cities were not able to supply adequate space and that amount must be annualized also. The Forensics lab hit the market at a good time and their rent is only \$12.50/square foot. It will stay below the new average of \$15.00/square foot (the Missoula Regional Prison) for 15 years. The national average for a forensics lab is \$16.60.

**REP. PATTISON** asked how the footage compares from the old to the new facility. **Mr. Fasbender** responded the St. Pat's Hospital space was about 19,000 square feet and the new lab has about 33,000. The additional space is critical in viewing evidence in separate rooms to avoid cross contamination. **CHAIRMAN FISHER** added the hospital did not ask the lab to leave; they were destroying the hospital while building a new one and the lab had no choice but to leave.

**REP. PATTISON** asked about the backlog in the workloads for the Child Protective Services. **Mr. Fasbender** stated the primary cause is more and more cases to investigate. Most of those children have been in foster care too long now and need to be dealt with on a more expeditious manner. Also, in dealing with their caseloads the courts have set more stringent deadlines as far as when the Department has to respond. **REP. PATTISON** asked if the number of children has increased. **Mr. Fasbender** replied there is actually a decrease in the number of children but an increase in the number of children being affected by such issues as parental drug use and alcohol use. The methamphetamine cases alone are causing an increase in child neglect.

**REP. PATTISON** asked about the possibility of gambling addictions causing child neglect. He also asked if some of the gambling fees could be used to offset costs involved with Child Protective Services. **Mr. Fasbender** stated currently there are no provisions to use gambling money for Child Protective issues. **Mr. Fasbender** responded he has no statistics on a correlation between gambling and child neglect.

**CHAIRMAN FISHER** asked for clarification on the duties of the 5 attorneys in the Child Protective Unit. **Mr. Fasbender** stated that although some of the county attorneys thought they would take the cases over completely, that was not the intention. They were to be a support staff for the county attorneys to assist them. However, in some instances they have been directed to handle cases that were old and causing eminent danger to the child. **Mr. Fasbender** is not asking for additional funds for that unit; the department is asking the funds to be annualized since they were not in the base year.

**CHAIRMAN FISHER** asked about the increase in travel funds. **Mr. Fasbender** replied the 5 attorneys cover the entire state and requires extensive travel.

**CHAIRMAN FISHER** asked for clarification of the Tobacco Audit of Non-Participating companies. **Mr. Fasbender** explained those companies who did not participate in the tobacco settlement could not grow in market share without reducing the amount of money contributed by those who did participate in the suit. Therefore, the non-participating companies are required to pay money to an escrow account in order to assure monies would be available to pay the State of Montana for damages if they ever became part of the settlement. **CHAIRMAN FISHER** asked if the \$35,000 could be taken out of the tobacco money instead of the general fund. **Mr. Fasbender** answered it would be a policy decision to be made by the legislature but currently the Budget Director asked for it to be out of the general fund. **SEN. CHRISTIAENS** stated it should be remembered that 60% of the tobacco money is going to the general fund; therefore, in essence, this \$35,000 could be considered coming from the tobacco money.

**SEN. SHEA** asked where the 5 attorneys for the Child Protective Unit are placed. **Mr. Fasbender** replied it is in conjunction with the 5 DPHHS regions.

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**Ms. Thorson** stated in the Martz budget, DP 1003 Tobacco Audit of Non-Participating Manufacturers for \$35,000 is out and DP 1005

Major Litigation was reduced by \$50,000 each year. The new numbers for major litigation base adjustments would be \$21,725 general fund in fiscal 2002 and \$21,726 in fiscal 2003.

### **CENTRAL SERVICES**

***{Tape : 2; Side : A; Approx. Time Counter : 10}***

**Mr. Doug Booker, Administrator, Central Services Division**, gave an overview of the division including background, finance staffing, personnel staffing, funding, and the budget.

### **EXHIBIT (jch13a04)**

Mr. Booker stated this Division is responsible for ensuring 721 personnel are paid every two weeks and are accountable for the funds appropriated by the Legislature. He comes to the committee requesting additional FTE. The changeover from the old SBAS to the new SABHRS accounting system has made it impossible to get the work done with the same number of staff. The average finance staff to department FTE ratio in other departments is 1-45. In Department of Justice, the ratio is 1-90.

There was considerable discussion on the SABHRS system and why a new system has caused more work. **CHAIRMAN FISHER** feels the computers are causing more work and requiring more staff rather than less. **Mr. Fasbender** explained people are working on the bugs; however, time and training for the agencies to learn the system is necessary. Generally, computers are allowing more work to be done by fewer people. Although putting the information in the system is time consuming, extraction is very difficult. SABHRS is one of those systems which will take some time to work effectively. **Mr. Fasbender** stated there are times when new systems are put in place and work very well; others do not. Ultimately, however, the state is going to have to learn to use computers to do more with less. Technology is going to drive state government just as it is in the private sector.

**Ms. LaFond** stated the magnitude of the computer system change was more than expected. But the system is now in place and they are fine tuning it. The Justice Department was short of staff in the beginning to learn the system. They desperately need the 2 new FTE to catch up with the other agencies.

### **THE LAW ENFORCEMENT ACADEMY**

***{Tape : 2; Side : A; Approx. Time Counter : 350}***

**Mr. Greg Noose, Division Administration, Montana Law Enforcement Academy** presented information on the Montana Law Enforcement Academy.

**EXHIBIT(jch13a05)**

Currently there are 54 students on campus in training. He distributed copies of the current roster, schedule of classes, and the 2001 Legislative Subcommittee Report.

**EXHIBIT(jch13a06), EXHIBIT(jch13a07), AND EXHIBIT(jch13a08)**

**Mr. Noose** went on to give an introduction and background of the agency. The number of Montana Police Officers has increased and the academy, as a result, has trained 5 times the number of officers with no increase in staff since 1987. Computers is one reason more work has been done with less people. The Academy has an impact in every corner of the state as evidenced by the current roster. People in this class have come from Sidney, Poplar, Harlowton, Phillipsburg, Wolf Point, Eureka, Missoula, Great Falls, Terry, Hamilton, Red Lodge, Butte, Malta, and Bozeman, to name a few of the 30 communities represented. He showed photographs from several classes covering the entire state. The current class is the 111<sup>th</sup> session.

**{Tape : 2; Side : B; Approx. Time Counter : 0}**

These students come from local communities to be trained in their first year; however, training is not limited to only law enforcement officers. They have trained coroners, correction officers, detention officers, public safety communications officers, juvenile probation officers, parole officers, motor carrier services officers, animal control officers, and ex-officio game wardens to name a few. The majority of the trainees are sent by local sheriff's departments. The Academy does for local law enforcement agencies what they cannot do for themselves--turn a local boy into a police officer meeting certain standards and requirements cost effectively.

**Mr. Noose** stated the Academy is best known for the basic course of twelve weeks. It is a hands-on training course. Pepper spray training is one example. Students are exposed to it and taught how to use it. He particularly stressed the importance of the gymnasium at the Academy. It has enhanced training immensely as a center for much of the hands-on training. The Academy has also provided information on training methods to aid in law suits against police officers/agencies. On occasion, students have been failed due to not meeting required physical standards or



misconduct. It is the job of the Academy to screen people who are not qualified.

There are 11.5 FTE employed by the Department of Justice, one trainer permanently assigned from the Department of Corrections, and trainers funded through a federal grant designed to Stop Violence Against Women.

Vacancy savings is a problem for the agency as they have an experienced staff with small turnover. **SEN. CHRISTIAENS** asked why vacancy savings is applied to the Academy if they are under 20 FTE. **Ms. LaFond** responded the under 20 FTE applies to a total agency; the Law Enforcement Academy is one program within an agency--the Department of Justice. **Mr. Noose** added currently there is a staff member serving 6 months in Kuwait as a guardsman. This position is actually helping him reach his vacancy savings target, but in turn creates a hardship of a missing staff member.

**SEN. CHRISTIAENS** asked about the vacancy savings factor when an agency with almost no turnover cannot meet it. **Ms. LaFond** replied there is a personal services contingency pool in the Governor's Office that is first offered to those agencies with 20 or less FTE. Other agencies are welcome to submit a form to justify their efforts to mitigate the vacancy savings. It is handled on a case by case basis. They may receive the entire request or a portion of it. They have added \$1 million to the pool knowing there are some agencies who have little turnover and will have a problem with it. There is a very small percentage of agencies with 20 or less FTE. **CHAIRMAN FISHER** stated the problem with replacing staff at the MLEA is the skill level needed. It is a specialized area.

**Mr. Noose** added that many of their instructors are contract labor sent to them sometimes at no cost but usually at \$12.50/hour. That allows them to bring in veteran field law enforcement officers to train new recruits. One of the MLEA requests is to increase the hourly stipend fee to \$14.00/hour. It is necessary to help him continue to find qualified staff. The MLEA's mission is defined by statute 4410 which is "The Montana Law Enforcement Academy is a means of securing training in the field of law enforcement."

**Mr. Noose** updated the committee on the standardized corrections training program which was first funded in 1997. This program came about with the development of regional prisons. Montana is rare to have regional prisons and even more rare to train all corrections officers together. However, Shelby conducts their

own basic training in accordance with the standards MLEA provides.

The MLEA has offered 47 classes for corrections officers and the classes sessions are being increased from six to eight a year.

**Mr. Noose** addressed the budget requests. The bulk come from two changes. At the request of the Governor, they have requested \$100,000 federal funds and \$50,000 state special funds in spending authority. This is to let the MLEA take advantage of federal funds when they become available. The second is a federal grant to Stop Violence Against Women. The funding for this has now been extended for the next five years. No new FTE's will be added in approving the spending authority for this grant. It formalizes as an accounting measure the way the grant is recorded.

Another budget request is for contingency funding to add students to basic training. This is to allow training if the class sizes increase. He may or may not use the money based on the number of officers sent to basic training. At the present the demand is up--the current class was to be 32 and is now at 47. **CHAIRMAN FISHER** asked for clarification regarding the legislature setting the standards. **Mr. Noose** responded that although the base of the mandate was to have a law enforcement academy, sometimes the legislature has stipulated such standards as the number of hours of training required in each field. Other times the Crime Control Board sets the curriculum and standards. **Mr. Noose**, however, answers to the legislature and the Attorney General. **SEN. CHRISTIAENS** informed the committee of a bill before the senate requiring 40 hours of training for 911 emergency staff.

**Mr. Noose** continued the increased class loads cost additional funds. **SEN. CHRISTIAENS** asked if some of the spending authority was used when the correctional officers were added this last year. **Mr. Noose** replied it was not due to the fact that the contingency spending authority is linked to the 12-week basic training for law enforcement officers. The MLEA worked with the prisons to put on regional sessions to cut the cost and raised tuition for local law enforcement officers assigned to the sheriff's departments. The agencies began paying for their own meals which reduced the MLEA costs just enough to cover the extra training required for the correctional officers.

**Mr. Noose** then talked about the campus. There are four residential units with room for 108 students in 84 rooms. There are five classrooms, a gymnasium, a library, two conference rooms, a dining hall operated by a private vendor (which served 41,000 plates last year at \$11.85/day), 50,000 gallon water tank,

340' well that is 46 years old, and a large sewer system. This creates maintenance costs.

***{Tape : 3; Side : A; Approx. Time Counter : 0}***

**Mr. Noose** is proud of the fact that the MLEA has renovated the campus extensively. However, his maintenance budget is based on the old MLEA campus costs in Bozeman when they were in mobile homes. In addition, utility costs are a big issue. Utility costs for the past two months have increased by \$4000 over the previous year.

In conclusion **Mr. Noose** stated the men and women who serve in law enforcement deserve the best we can offer. He hoped with legislative support the MLEA will continue to operate efficiently and maintain the effectiveness and integrity of the training programs. In two of the photos shown, two officers have been killed in the line of duty. He reminded the committee it is the training standards for these people who do such a demanding job that can make the difference and thanked the committee for their support.

**SEN. CHRISTIAENS** pointed out proper training for officers to deal with mental health criminals can be critical in life-threatening situations such as occurred in the death of Shane Chadwick, the last officer who gave his life.

**CHAIRMAN FISHER** asked for clarification on DP 2207. **Ms. LaFond** stated legislative contract authority has been in place for a number of years. It applies to only federal and private funds in the case of MLEA. State special revenue encompasses several types of authority. State special revenue can be fees collected from Fish, Wildlife, and Parks but also includes private funds which is what applies to MLEA. If it is the decision of the committee to continue the legislative contract authority, it can be specified as private funds. The legislative contract authority is in place for those unanticipated types of funds that become available from the government or from private sources. The authority has to be requested again every two years. If it is not used, it is idle authority.

**CHAIRMAN FISHER** asked where in the budget the fees are located. **Mr. Noose** stated it is revenue put in the general fund. There were \$130,000 in fees collected last year which is used to offset

his costs. A private student pays the full expense of \$3000; a state agency pays about \$600 per student.

**SEN. CHRISTIAENS** asked about the availability of training for a private student. **Mr. Noose** replied it would need to be planned in advance. He accepts civilian applicants for the fall program. However, applications are faltering now due to the low unemployment rate. If unemployment changes, more applicants will be looking for this type of employment. The MLEA may be offering regional trainings in conjunction with job service.

**Ms. LaFond** corrected a previous figure given to the committee. There is \$1 million in vacancy savings contingency funds in the Martz budget, \$500,000 have been added to total \$1,500,000. There is a total \$3,000,000 in other funds.

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**ADJOURNMENT**

Adjournment: 10:31 A.M.

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REP. STANLEY FISHER, Chairman

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SANDRA WHITAKER, Secretary

SF/SW

**EXHIBIT** (jch13aad)